

**January 30, 2007**

**SUBJECT:** Findings Relative to Six-Month Pilot Program for Earlier Distribution of Staff Reports to Council

**BACKGROUND**

On October 4, 2005, staff delivered a Report to Council titled "Timelines for Noticing Council Meeting Agendas and the Distribution of Agendized Reports to Council" (RTC 05-286). Two concerns brought this issue forward: Council's interest in receiving reports earlier in order to have sufficient time to review them prior to taking action; and the public's preference for earlier notice of specific Council business and earlier access to corresponding reports.

Following a public hearing on October 4, 2005, City Council determined that:

1. The public noticing of Council meeting agendas for regularly scheduled meetings should occur five days in advance of the meeting (on Thursday preceding a Tuesday meeting) as opposed to four days in advance, with implementation to begin July 1, 2006 for a trial period of six months;
2. The public distribution of hard copies of approved reports to Council should occur five days in advance (on Thursdays preceding Tuesday meetings) as opposed to four days in advance. Reports should be made available at the Library and the City Clerk's Office on Friday morning, with implementation to begin July 1, 2006 for a trial period of six months;
3. The online posting to the City's Web site of approved staff reports for regularly scheduled Council meetings should occur five days in advance (on Thursdays preceding Tuesday meetings) as opposed to four days in advance, with phased implementation beginning no later than July 1, 2006 for a trial period of six months;
4. Final reports to Council should be distributed earlier than five days in advance whenever finalized and approved (by the City Manager) in advance of their due date. Staff was to develop guidelines for early release of reports, with implementation to begin July 1, 2006 for a trial period of six months;
5. Contact information should be added to the Tentative Council Meeting Agenda Calendar posted on the City Web site so that members of the public can more easily make inquiries regarding pending agenda items; and

6. The distribution of *certain types of reports* should occur earlier than five days in advance. Council requested that staff return to Council in January, 2006 with its recommendation regarding the specific types of reports to be delivered earlier, corresponding timelines, and a proposed implementation schedule. On January 24, 2006, staff returned to Council for further direction regarding the types of reports to be distributed earlier than five days in advance (RTC 06-006). Council determined that Study Issues and Reports to Council with Planning Commission advisory action should be made available on-line at least seven days prior to the date the item appears on the Council agenda, and that Utility Rate reports should be posted on-line at least 14 days in advance of a Council hearing (hard copies of all these reports would be distributed 5 days in advance, like any other report).

Since July 1, 2006, staff has been piloting the implementation of these Council directives regarding the earlier distribution of staff reports. The remainder of this report discusses the pilot program and related findings.

### **EXISTING POLICY**

Planning and Management Element, Community Participation Sub-Element:

Goal 7.2A: Achieve a community in which citizens and businesses are informed about local issues and City programs and services.

Policy 7.2A.2: Publish and distribute information regarding City programs and services, City Council actions, and policy issues.

Policy 7.2C.2: Ensure that appropriate and effective public notification and access, in accordance with City Council policies, are provided to enhance meaningful community participation in the policy-making process.

Goal 7.2D: Assure that all citizens have reasonable access to City information, services, programs, policy makers and staff.

### **DISCUSSION**

A discussion of the pilot program and staff's findings follows:

#### **What Went Well**

In general, the pilot project was implemented as planned, and resulted in the desired effects. Two hundred fifty reports were created during the pilot, all but three of which met earlier distribution deadlines.

Distributing reports further in advance of public hearings has provided obvious advantages, all of which promote the City's objectives pertaining to civic

engagement and open governance. In general, the longer the report review period, the more likely that these objectives will be met:

1. **Informed decision-making.** Many reports to Council deal with complex issues and present a tremendous amount of background information which takes time to put into perspective. In fact, the primary purpose of staff reports is to promote *informed* decision-making. The longer the Council and the public have access to a staff report, the more likely they are to have sufficient time to fully read it, digest it, and consider alternative courses of action. Each of these steps takes time, and each is a critical stepping stone to the informed decision-making upon which the public policy-making process relies.
2. **Time to React to Public Review.** Despite staff's best efforts to cover all the bases, complex reports sometimes raise questions (from the public and/or Council) which would benefit from a longer review period, enabling staff to better research answers prior to the public hearing and Council action. This allows for a more thorough review and minimizes the potential for decisions to be made despite a lack of desired information.
3. **The Juggling of Multiple Issues.** It is not unusual for members of the public who are interested in only *one* specific report or issue, and who have been following related issues for some time, to express a desire for a longer report review period. It is also not unusual for them to expect their Council to be equally informed and versed in the specifics of their issue. This underscores the relative importance of a longer review period for Councilmembers, who are expected not only to be informed regarding the issue of interest to that particular individual, but all others as well. Council often is forced to digest a large number of varied topics each week.
4. **Greater Public Exposure.** The longer the review period, the more likely that all those interested in a particular subject are made aware and can find the time to read the report. This clearly supports the City's desire to promote open governance and to maximize the community's participation in the policy-making process.

### Challenges

- While the *nature* and *amount* of work involved with reports to council has not changed, the *timing* of internal staff schedules and calendars has required adjustment. Staff missed two study issue deadlines early on during the pilot project simply due to lack of familiarity with new processes and difficulties associated with breaking old routines. Each report was posted earlier than normal, but did not meet the 7-day target. Staff has since adapted relatively well to most timing issues, and continued concentration

on new routines and processes to support new deadlines should correct remaining issues.

- Timing continues to be an issue regarding Utility Rate and Fee Schedule Reports. Related timing is particularly challenging because of new regulatory requirements regarding the information to be included in the reports, public noticing requirements, the availability of related information by dates certain, and the City's own internal deadlines related to adoption of the fee schedule and budget. Staff will continue to explore this area and report back to Council as new information becomes available.
- Once the public becomes familiar with the City's new distribution timelines, most will realize that routine reports will be available on the web 5 days in advance of the scheduled public hearing for that item. Study Issues, Planning Commission advisory reports, and Utility Rate reports are supposed to be posted even earlier. Those earlier postings, however, will only be meaningful if the public is made aware of them. As a result, staff has committed to informing the public of earlier online postings. Unfortunately, staff's best efforts to date fall short of its own expectations in terms of effectiveness. Members of the public can subscribe to an email notification system (eBot) for specific subjects (e.g., Planning reports) or for generic changes to Council's meeting agendas, but a resident interested in being notified of the availability of specific types of reports (e.g., utility rate reports or study issues dealing with telecommunications) will not likely be satisfied. This is because the "eBot" notifications that are sent out only alert the reader to the fact that a change to the Council agenda has been made—it does not specify the type of change or the subject matter of any reports that have been made available. To determine what the agenda change is, a reader must click on the Council website and then click each "earlier" report number individually to determine whether that report addresses the subject matter of interest. On any given week, an interested party could click on numerous reports only to find that none of them have anything to do with the subject matter in which they are interested. This could go on for weeks if one is looking for a particular type of report. Staff is aware of this and is exploring ways of improving the effectiveness of the notification system.
- One of the results of the pilot project was a negative impact to the timely production of draft Council minutes. Council may have noted that during the pilot project draft minutes were late (not included in the following week's packet) more often than normal. The ability of staff to provide these minutes in timely fashion is directly impacted by the length of the Council meeting (longer meetings mean lengthier minutes) and the time available for creating the minutes. Distributing reports to Council one day earlier means that Council packets must be developed one day earlier, which in turn means

that draft minutes must be prepared one day earlier in order to be inserted into the packets. Prior to the pilot project, staff had two and one-half days to prepare draft minutes (Wednesday a.m. through Friday noon). During the pilot project, that time was reduced to one and one-half days (Wednesday a.m. through Thursday Noon). Depending on the length of Council meetings and other work assigned the Office of the City Clerk, draft minutes will likely be late more often if the pilot project is formalized. Staff is exploring ways to mitigate this effect by streamlining the production of minutes, but barring any change in current practice or policy, it is likely that there will be a continued effect in this area. Staff is preparing a separate Report to Council to address this issue.

- Staff will continue to release (i.e., post to the internet and provide hard copies to the Library and Office of the City Clerk) *any* report that happens to be finalized by the City Manager earlier than anticipated. However, posting reports earlier than scheduled could in some cases lead the public to wonder why a longer than planned review period is necessary (i.e., if the report is completed earlier than expected, why couldn't the item also be *agendized for Council action* earlier than expected?). There are two challenges associated with changing scheduled Council hearings: one is the difficulty of rescheduling items given Council's busy meeting calendar and the number of agenda items on certain nights in particular. The other is that changing dates can be problematic for the public, particularly when it comes to controversial or emotionally-charged items that have seen heavy noticing of the public by flyer, or some other noticing methodology. In these cases, one can not know for certain whether those who saw the earlier date will also see the revised date (e.g., someone wishing to speak may fail to be notified of the change in date and miss the opportunity to be heard by Council). For these reasons, reports released earlier than anticipated will not generally result in a change to scheduled Council hearing dates.

#### Why not distribute reports even sooner?

Despite the challenges outlined above, it is difficult to argue against the concept of extending the public review period for reports to Council. In fact, one can argue effectively that an even earlier distribution of Council reports is warranted, based on the obvious benefits identified previously in this report. A closer review, however, reveals several impacts to public service of which Council should at least be aware. In fact, the more days in advance reports are distributed, the greater each of these impacts:

1. While adding additional public review days does not reduce or extend the time required to *prepare* a report (research, writing, review and approval, board/commission input, etc.), it does extend the total amount of time required to produce a policy position. While two or three additional days

may not seem like much, that amount of time can mean a lot to those waiting for a specific issue to be acted on by Council. It already takes several months to bring the average Study Issue to Council, and every day can be meaningful to those keen on Council action. For some, one or two additional days can be perceived as a barrier to the timely handling of an important issue. Were Council to consider even lengthier public review periods (e.g., a two week period), final action would obviously be delayed even further. Providing even earlier notification would require no more nor no less work on the part of staff—it simply would extend the overall time needed to resolve a policy issue. Such an extension of time would be factored into the overall timeline of a proposed policy issue during staff's initial planning. One unanticipated result could be that fewer Study Issues were planned for the early part of any calendar year (i.e., more would be pushed out to the latter part of the calendar year due to increased public review time).

2. The City typically plans its study of policy issues very methodically, allowing ample time for the formulation of staff reports. On occasion, however, Council finds the need to ask how quickly a particular report can be developed. Staff wishes to call to Council's attention the relationship between providing extended report review times, and the ability to produce "short notice" reports: for each additional day that the standard report review period is extended, Council's flexibility in creating "short-notice" reports is reduced by the same amount. For example, prior to this pilot project, any report that was finalized (i.e., approved by the City Manager) by Friday noon could conceivably be distributed and ready for Council to act on the following Tuesday evening. Now, any report that is finalized on a Friday will need to wait an additional week before it can be placed on an agenda (a Friday distribution will no longer allow the required public review time prior to the pending Tuesday). While this may be of little or no consequence in most cases, there could be occasions where this would be perceived by the public and/or Council as a barrier to the timely handling of an important issue. The more days in advance that Council requires reports to be posted or distributed, the less ability staff and Council will have to facilitate short turn-around times.
3. The further in advance staff finalizes a report to Council for public review, the less able it will be to incorporate late-developing information into that report. This is already a fairly common occurrence regarding Community Development issues dealing with land use, where staff and/or applicants provide supplemental information in the form of letters, petitions, or staff revisions. Clearly, the further in advance staff attempts to "finalize" reports, the greater the likelihood that additional information will come to light prior to actual Council action. This could result in a significant increase in supplemental pieces of information being disseminated in a variety of ways

(email, verbal presentations, letters, written correspondence handed out the evening of the Council action, etc), complicating everyone's (Council, staff, and the public's) ability to perform an effective, efficient review of the overall issue. This may also complicate the City's records retention activities.

### **FISCAL IMPACT**

One of the reasons staff initially recommended a six-month pilot program for the earlier posting of agendas and delivery of reports to Council was that it could not foresee all the possible ramifications, including financial implications, associated with program implementation.

Staff indicated that if it became aware of fiscal impacts during the pilot program, those would be communicated to Council upon completion of the pilot. Staff found no fiscal impacts associated with the earlier distribution of reports during the pilot program.

### **PUBLIC CONTACT**

Public contact was made through the posting of the Council agenda on the City's official notice bulletin board, posting of the agenda and report on the City's Web page, publication of the Council agenda in the *San Jose Mercury News*, and the availability of the report in the Library and the City Clerk's Office. Copies of this report were also shared with each of the City's boards and commissions.

### **ALTERNATIVES**

1. Adopt the pilot program as described in this report as standard policy for the future.
2. Adopt the pilot program with specific modifications as directed by Council.
3. Do not adopt the pilot program. Revert back to Report to Council deadlines in place prior to the pilot program.

### **RECOMMENDATION**

Staff recommends Alternative Number 1. Providing Council and the public additional time to review the often complex and voluminous information provided in Reports to Council will help to ensure sound policy-making as well as strengthen public participation in that process.

Reviewed by:

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Prepared by: Robert Walker, Assistant City Manager

Approved by:

Amy Chan  
City Manager